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MIAMI-DADE COUNTY, FLORIDA

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Document Title: Development Agreement
(Mortgage, Deed, Construction Lien, Etc.)

Executing Party: City of Miami

CG Miami River, LLC

Legal Description: _____
(If Applicable)

As more fully described in above described document.

Return Document To / Prepared By:

Melissa Tapanes Llahues

Bercow Radell & Fernandez, PLLC

200 S. Biscayne Blvd., Suite 850

Miami, FL 33131

F.S. 695.26 Requirements for recording instruments affecting real property—
(Relevant excerpts of statute)

(1) No instrument by which the title to real property or any interest therein is conveyed, assigned, encumbered, or otherwise disposed of shall be recorded by the clerk of the circuit court unless:

(e) A 3-inch by 3-inch space at the top right-hand corner on the first page and a 1-inch by 3-inch space at the top right-hand corner on each subsequent page are reserved for use by the clerk of the court...



**DEVELOPMENT AGREEMENT BETWEEN CITY OF
MIAMI, FLORIDA AND CG MIAMI RIVER OWNER, LLC,
REGARDING APPROVAL OF THE MIAMI RIVER
SPECIAL AREA PLAN AND RELATED DEVELOPMENT**

This is a Development Agreement ("Agreement") made this 24 day of February, 2016 between CG Miami River, LLC, a Delaware corporation, (the "Developer" and "Owner") and the City of Miami, Florida, a municipal corporation and a political subdivision of the State of Florida (the "City") (the Developer and the City are together referred to as the "Parties").

WITNESSETH

WHEREAS, the Developer is the fee simple owner of approximately 6.2 acres of property in Miami-Dade County, Florida, shown and legally described in Exhibit "A", located between SW 7th Street on the south, the Miami River on the north, SW 2nd Avenue on the east, and SW 3rd Avenue on the west, within the City (the "Property"); and

WHEREAS, the Property is designated Industrial/Port of Miami River and Restricted Commercial on the Future Land Use Map, within the Urban Central Business District ("UCBD") and the Little Havana Residential Density Increase Area according to the Miami Comprehensive Neighborhood Plan ("Comprehensive Plan"), shown in Exhibit "B"; and

WHEREAS, the Property is impacted by the Coastal High Hazard Area along the Miami River; and

WHEREAS, the Property is zoned D3 Waterfront Industrial and T6-36B-O Urban Core, according to the Miami 21 Zoning Code ("Miami 21"), shown in Exhibit "C"; and

WHEREAS, the Property is currently underutilized in that it consists of vacant and underdeveloped lots; and

WHEREAS, the Property is located in an Empowerment Zone for which the City envisions redevelopment through community-based partnerships to encourage economic revitalization and sustainable community development; and

WHEREAS, the current status of the Property is inconsistent with the City's vision to develop a world class downtown, and wishes to encourage development of the Property; and

WHEREAS, the City and the Developer wish to redevelop the Property as a high density, mixed use, pedestrian-oriented urban development providing much needed retail uses and amenities for the urban center; and

WHEREAS, a process exists within Miami 21 which allows parcels of more than nine (9) abutting acres to be master planned to allow greater integration of public improvements and infrastructure, and greater flexibility so as to result in higher or specialized quality building and streetscape design; and



WHEREAS, the result of this master planning process is known as a "Special Area Plan" ("SAP"); and

WHEREAS, the City is the fee simple owner of approximately four (4) acres of property (collectively, the "City-owned Property") in Miami-Dade County, Florida, shown in Exhibit "D", adjacent to the Property and located along the Miami River, within the City, and said City-owned Property includes certain City park areas and rights-of-way, and abuts certain submerged lands owned by the State of Florida ("State") through the Board of Trustees of the Internal Improvement Fund ("State Submerged Lands") also shown in Exhibit "D;" and

WHEREAS, on April 30, 2015, the Developer filed an application with the City for approval of the Miami River SAP with a total of approximately 10.2 acres of land shown in Exhibit "E," including certain portions of the City-owned Property and the abutting State Submerged Lands, shown in Exhibit D (collectively, "SAP Application Area"), in order to redevelop the Property as a mixed use development with residential and lodging units, retail, restaurants, working waterfront uses, office, and other amenities, including a public riverwalk which will cross the City-owned Property and the abutting State Submerged Lands (the "Miami River SAP" or the "Project"); and

WHEREAS, the City serves as co-applicant for approval of the Miami River SAP; and

WHEREAS, the Miami River SAP's location on the Miami River will allow for use and enjoyment of the Miami River by its residents and patrons, and the general public as well; and

WHEREAS, the Miami River SAP will create certain recurring fiscal benefits for the City's tax base as well as much needed temporary and permanent jobs; and

WHEREAS, the City and the Developer wish for the development of the Project to proceed substantially in accordance with the "Miami River SAP Regulating Plan" and "Design Guidelines" attached as Exhibit "F"; and

WHEREAS, the City and the Developer wish for development of the Miami River SAP to proceed in a manner which is consistent with the Comprehensive Plan, Miami 21, the City Charter, the Miami River Greenway Action Plan, and the Miami River Corridor Urban Infill Plan; and

WHEREAS, the lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning; and

WHEREAS, as a condition to the approval of the Miami River SAP, the Developer must enter into a Development Agreement pursuant to Section 3.9.1.f. of Miami 21; and

WHEREAS, assurance to a developer that it may proceed in accordance with existing laws and policies, subject to the conditions of the Development Agreement, strengthens the



public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning, and reduces the economic cost of development; and

WHEREAS, the City Commission pursuant to Legislative File Identification Number 15-00624da approved on October 22, 2015 has authorized the City Manager to execute this Agreement upon the terms and conditions as set forth below, and the Developer has been duly authorized to execute this Agreement upon the terms and conditions set forth below; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, it is hereby understood and agreed:

Section 1. Consideration. The Parties hereby agree that the consideration and obligations recited and provided for under this Agreement constitute substantial benefits to both parties and thus adequate consideration for this Agreement.

Section 2. Rules of Legal Construction. For all purposes of the Agreement, unless otherwise expressly provided:

- (a) A defined term has the meaning assigned to it;
- (b) Words in the singular include the plural, and words in plural include the singular;
- (c) A pronoun in one gender includes and applies to other genders as well;
- (d) The terms "hereunder", "herein", "hereof", "hereto" and such similar terms shall refer to the instant Agreement in its entirety and not to individual sections or articles;
- (e) The Parties hereto agree that this Agreement shall not be more strictly construed against either the City or the Developer, as all parties are drafters of this Agreement; and
- (f) The recitals are true and correct and are incorporated into and made a part of this Agreement. The attached exhibits shall be deemed adopted and incorporated into the Agreement; provided however, that this Agreement shall be deemed to control in the event of a conflict between the attachments and this Agreement.

Section 3. Definitions. Capitalized terms which are not specifically defined herein shall have the meaning given in Miami 21.

"**Agreement**" means this Development Agreement between the City and the Developer.



"City" means the City of Miami, a municipal corporation of the State of Florida, and all departments, boards, committees, agencies and instrumentalities subject to the jurisdiction thereof.

"Comprehensive Plan" means the comprehensive plan known as the Miami Comprehensive Neighborhood Plan, ("MCNP") adopted by the City pursuant to Chapter 163, Florida Statutes (2014), meeting the requirements of Section 163.3177, Florida Statutes (2014); Section 163.3178, Florida Statutes (2014) and Section 163.3221(2), Florida Statutes (2014), which are in effect as of the Effective Date of the Agreement.

"County" means Miami-Dade County, a political subdivision of the State of Florida.

"Development" means the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three (3) or more parcels and such other activities described in Section 163.3221(4), Florida Statutes (2014).

"Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

"Effective Date" is the date of recordation of the executed, original version of this Agreement.

"Existing Zoning" is (a) Miami 21 Code, effective May 2010, as amended, specifically including the Miami River SAP, and (b) the provisions of the Charter and City Code of Miami ("Code") which regulate development, specifically including Chapters 10, 13, 22, 23, 36, 54, 55 and 62 of the Code as amended through the Effective Date, which together comprise the effective land development regulations governing development of the Property as of the Effective Date.

"Land" means the earth, water, and air, above, below, or on the surface and includes any improvements or structures customarily regarded as land.

"Laws" means all ordinances, resolutions, regulations, comprehensive plans, land development regulations, and rules adopted by a Local and State government affecting the development of land.

"Public Facilities" means major capital improvements, including, but not limited to, transportation, sanitary sewers, solid waste, drainage, potable water, educational, parks and recreational, streets, parking and health systems and facilities.



"Developer Parties" and "Developer" mean the property owner(s) who are signatories to this Agreement.

Section 4. Purposes. The purposes of this Agreement are for the City to authorize the Developer to redevelop the SAP Application Area pursuant to the Miami River SAP, to document certain improvements by the Developer to the City's adjacent park and public areas and the Developer's utilization of such adjacent park and public areas to benefit the public, for the City to authorize the Developer to access and to utilize certain portions of the City-owned Property for the riverwalk of the Development, and to document the related approval of access by the State to the State-owned Submerged Lands regarding the Riverwalk for the Development. This Agreement will establish, as of the Effective Date, the land development regulations which will govern the development of the Property, thereby providing the Developer with additional certainty during the development process. This Agreement satisfies the requirements of Section 3.9.1.f., Miami 21.

Section 5. Intent. The Developer and the City intend for this Agreement to be construed and implemented so as to effectuate the purpose of the Miami River SAP Regulating Plan and Design Guidelines, this Development Agreement, the Comprehensive Plan, Miami 21, the City Charter, the Code, and the Florida Local Government Development Agreement Act, Sections 163.3220 - 163.3243, Florida Statutes (2014).

Section 6. Legal Description of Land, Names of Legal Owners, Applicability. This Agreement only applies to (a) the Property identified and legally described in Exhibit "A", and (b) the City's park and public areas to be improved and utilized by the Project to benefit the public, and (c) the limited access and use for the riverwalk of the City-owned Property Lands identified in Exhibit "D"; and the respective legal and equitable owners are the City and the State.

Section 7. Term of Agreement, Effective Date and Binding Effect. This Agreement shall have a term of thirty (30) years from the Effective Date and shall be recorded in the public records of Miami-Dade County by the Developer and filed with the City Clerk. The term of this Agreement may be extended by mutual consent of the Parties subject to public hearing(s), pursuant to Section 163.3225, Florida Statutes (2015). This Agreement shall become effective on the Effective Date and shall constitute a covenant running with the land that shall be binding upon, and inure to, the benefit of the Developer Parties, their successors, assigns, heirs, legal representatives, and personal representatives. If the Property is submitted to condominium ownership pursuant to the Florida Condominium Act, Chapter 718, Florida Statutes (2015), then the association or other entity designated to represent the condominium ownership interests as to the Property, as may be applicable, shall be the proper party or parties to execute any such release for properties in a condominium form of ownership.

Section 8. Site Plan. The Property will be developed and used substantially in compliance with a compilation of plans, including, specifically, architectural plans entitled "Miami River," as prepared by Kobi Karp Architecture and Interior Design, Inc., and the landscape plans as prepared by Kimley Horn and Associates, Inc. and Raymond Jungles Landscape Architecture. All the foregoing plans are collectively referred to in this Agreement as the "Project" and are described in detail by plans on file with the City Clerk and are deemed to



be incorporated by reference. "Substantially in compliance," for purposes of this Agreement, shall be determined by the City Planning and Zoning Director, pursuant to Section 7.1.3.5 of Miami 21.

Section 9. Zoning, Permitted Development Uses and Building Intensities. The City has designated the SAP Application Areas "Miami River SAP" on the official Zoning Atlas of the City, pursuant to the applicable procedures in Miami 21. The Property is zoned T6-36B-O and D3 pursuant to Miami 21 and located within the Miami River Residential Density Increase Area permitting up to 400 units per acre. As part of the SAP process, the underlying land use and zoning designation will not be changed, although minor modifications to the T6-36B-O and D3 regulations are incorporated into the Miami River Regulating Plan and Design Guidelines. In accordance with the underlying land use and zoning regulations, there can be no residential density on the portions of the Property designated CS or D3. In approving the Miami River SAP, the City has determined that the uses, intensities, and densities of development permitted thereunder are consistent with the Comprehensive Plan and the Zoning. Signage and deviations to the regulations in the Code are articulated further in the Regulating Plan; signage shall be approved in accordance with the Regulating Plan and Article 10 of Miami 21.

Section 10. Future Development. Future development within the SAP Application Area shall proceed pursuant to the Miami River SAP Regulating Plan and Design Guidelines. The criteria to be used in determining whether future development shall be approved is: (a) consistency with the Comprehensive Plan, (b) this Agreement, (c) and the Miami River SAP. The Comprehensive Plan, this Agreement, and the Miami River SAP shall govern development of the SAP Application Area for the duration of the Agreement. Any modifications to the Project plans or this Agreement shall be approved in accordance with the Miami River SAP Regulating Plan and Design Guidelines. The City's laws and policies adopted after the Effective Date may be applied to the SAP Application Area only if the determinations required by Section 163.3233(2), Florida Statutes (2014), have been made after thirty (30) days written notice to the Developer and at a public hearing. Pursuant to Section 163.3245(3), Florida Statutes (2014), this prohibition on down zoning supplements, rather than supplants, any rights that may vest to the Developer under Florida or Federal laws. As a result, the Developer may challenge any subsequently adopted changes to land development regulations based on (a) common law principles including, but not limited to, equitable estoppel and vested rights, or (b) statutory rights which may accrue by virtue of Chapter 70, Florida Statutes (2014).

Section 11. Public Benefits. The Project consists of five (5) phases of development on the Property. Four (4) of the phases will utilize the City's Public Benefit Program for additional height as permitted under Miami 21 ("Benefit Height"). Phases 1 and 3, will contain approximately three hundred twelve thousand four hundred (312,400) square feet of Benefit Height each; Phase 4 will contain approximately two hundred forty-two thousand, four hundred square feet of Benefit Height (242,400); and Phase 5 will contain approximately three hundred forty thousand eight hundred (340,800) square feet of Benefit Height. The fee per square foot of Benefit Height is seventeen dollars and eighty two cents (\$17.82). After February 1, 2019, the Public Benefit fee per square foot shall be increased, and compounded annually, pursuant to the Consumer Price Index ("CPI") to a maximum of 2.75% per year. Accordingly, the total



estimated Public Benefits contribution to the City will be approximately twenty one million five hundred twenty six thousand five hundred and sixty dollars (\$21,526,560). The exact amount of the Public Benefits contribution shall be calculated prior to the issuance of the first vertical building permit for each of the Phases 1, 3, 4 and 5 and shall be due concurrent with the construction of each respective phase, unless otherwise noted in the Agreement. The City shall confirm that funds equivalent to the calculated Public Benefits contribution required for each phase have been or have been caused to be made on the project(s) listed in the SAP's Public Benefit Program and Phasing Schedule, and that such project(s) and contribution(s) are substantially complete prior to the City's issuance of the first temporary or permanent Certificate of Occupancy for the phase. The Director of Planning and Zoning has the authority to shift projects and funds between phases or as approved by the respective permitting agencies so long as funds equivalent to the calculated Public Benefits contribution prorated for each phase have been made prior to the temporary and/or permanent Certificate of Occupancy or bonded and approved by the Department of Public Works. Following ten (10) years from the Effective Date, in the event that the Project and/or Public Benefits Program have not been completed, the Director of Planning and Zoning has the authority to abandon the Public Benefits Program described in Exhibit "G" and require the Developer to tender direct Public Benefit contribution payments to the City.

(a) Affordable Housing Trust Fund. The Developer shall tender direct payment to the City of Miami Affordable Housing Trust Fund. Specifically, the Developer shall tender payment of not less than fourteen million dollars (\$14,000,000) into the Affordable Housing Trust Fund with said funds to be earmarked for the East Little Havana Area, generally bounded for purposes of this Agreement, within the boundaries of SW 8 Street to the South, SW 17 Avenue to the West, the Miami River to the North, and I-95 to the East. By no later than February 1, 2016, which is the date by which the Developer anticipates to submit a full set of construction drawings for any one of the four towers in the Project, the Developer will pay one million dollars (\$1,000,000) of the fourteen million dollars (\$14,000,000) into the Affordable Housing Trust Fund. The Developer will pay another one million dollars (\$1,000,000) of the fourteen million dollars (\$14,000,000) into the Affordable Housing Trust Fund upon receiving permits for the plans that were submitted by February 1, 2016. The balance of the fourteen million (\$14,000,000) Affordable Housing Trust Fund contribution shall be made prior to the issuance of a temporary or permanent certificate of occupancy for Phase 1, Phase 3, Phase 4, and Phase 5, respectively, as provided in Section 11 above.

(b) City of Miami Trolley. The Developer shall tender direct payment to the City of Miami Transportation Trust Fund of one and half million dollars (\$1,500,000) into a special revenue fund earmarked for the Little Havana City Trolley route to be paid to the City prior to a temporary Certificate of Occupancy for Phase 3.

(c) Jose Marti Park and Public Rights-of-Way. The Developer shall design, permit, and construct certain public improvements within the Miami River SAP area, particularly in Jose Marti Park, public rights-of-way, and other such improvements authorized by the City administration according to the SAP's Public Benefit Program and Phasing Schedule attached hereto as Exhibit "G." The Project plans are conceptual in nature and do not



constitute complete architectural and engineering drawings; further development, pursuant to the conceptual plans, is necessary. The City shall work with the Developer to allocate the Developer's proven paid parks and recreation impact fees to develop the Project consistent with the intent of the Plans for Jose Marti Park and the City-owned Property that are not included in Exhibit "G".

(d) Paramedic Station. In addition, the Developer shall deliver to the City of Miami an approximately eight thousand five hundred (8,500) square foot shell unit to be used as a paramedic station in the basement level of the Phase 5 tower with direct ingress and egress via a ramp to SW 7 Street ("Paramedic Station"). The Paramedic Station shall be delivered prior to the issuance of the first Temporary Certificate of Occupancy (TCO) for the residential portion of Phase 3. The City and the Developer shall enter into a lease for the Paramedic Station. This lease shall provide for a long-term ninety-nine (99) year lease of the Paramedic Station for one dollar (\$1) per year, without common area maintenance, condominium assessments, fees, levies, charges, similar impositions ("Condominium Assessments") or ad valorem taxes on the Paramedic Station portion of the Property. The City and Developer shall execute a Memorandum of Lease reflecting the foregoing terms, which shall be recorded in the Public Records of Miami-Dade County at the Developer's expense. At the Developer's option, the Developer may elect to transfer ownership in fee simple or condominium form of ownership to the City of Miami. Any condominium form of ownership shall affirm by lease or other written instrument to be recorded that the Paramedic Station shall not be subject to the Condominium Assessments. The City shall work with the Developer to allocate the Developer's proven paid fire-rescue impact fees to develop the Paramedic Station portion of the Project and the purchase of fire equipment consistent with this Agreement.

(e) Working Waterfront. The portion of the Property currently zoned D3, and designated as Industrial on the City's Future Land Use Atlas, shall maintain recreational and commercial working waterfront uses, including office, commercial, restaurants and lodging. Therefore, the Developer: (a) shall not object or otherwise attempt to impede any legally permitted working waterfront 24-hour operations; (b) shall provide all future tenants and prospective owners of the Property notice of the existing working waterfront 24-hour operations and will include a provision to agree not to object to legally permitted working waterfront 24-hour operations in each lease; (c) acknowledges that it is solely the Developer's responsibility to design its structures to accommodate legally permitted working waterfront 24-hour operations; and (d) will not pursue any claims for liability, loss or damage, whether through litigation or otherwise, against permittees engaging in working waterfront 24-hour operations, related to damage to Owner's structures, noise, smoke, fumes, bridge closures, and/or other quality of life issues that might result from legally permitted working waterfront 24-hour operations. A Declaration of Restrictions satisfying Policy PA-3.1.9 of the Comprehensive Plan for the Property is attached as Exhibit "H".

(f) Public Riverwalk. The Developer, at its sole cost and expense, agrees to develop the public riverwalk substantially in compliance with the Miami River Greenway Action Plan, Miami River Corridor Urban Infill Plan, Miami 21 and the



Project plans, between SW 2nd Avenue and along the City-owned Property at the ends of the City's rights-of-way abutting the State-owned submerged lands adjacent to SW 5th Street, and the western boundary of Jose Marti Park, SW 2nd Street (the "Riverwalk"). The Riverwalk on Jose Marti Park shall be constructed, open to the public and maintained by the City prior to the issuance of the first Certificate of Occupancy for Phase 1. The Riverwalk on the Property will be constructed, open to the public and maintained by the Developer prior to the issuance of the first temporary or permanent Certificate of Occupancy for Phase 2. Notwithstanding that Phase 2 of the Project is not included in the SAP's Public Benefit Bonus Program, prior to the issuance of the temporary Certificate of Occupancy for Phase 1, the Developer shall record a Notice of Commencement and commence construction of a public riverwalk on Phase 2 of the Property.

(g) Job Creation and Employment Opportunities. The Developer shall consult and coordinate with the City's CareerSource South Florida center located at the Lindsey Hopkins Technical Center at 750 NW 20th Street, 4th Floor, Miami, Florida 33127; the Youth Co-Op, Inc. located at 5040 NW 7th Street, Suite 500, Miami, Florida 33126; and state economic development entities regarding job training and job placement services to City residents seeking employment opportunities with potential employers which will locate or establish businesses within the Project. The Developer agrees to use diligent, good faith efforts to achieve or to cause its general contractor(s) and subcontractors (collectively, the "Contractor") to use diligent, good faith efforts to achieve, as applicable, the following aspirational goals:

- (a) The Contractor shall adhere to the following hierarchy with respect to hiring objectives and practices within the Miami River SAP area:
 - (1) Residents of the City who live within one (1) of the three (3) area zip codes: 33130, 33128 and 33135;
 - (2) Residents of the City who live within one (1) of the five (5) zip codes with the highest poverty rate ("City Targeted Zip Codes");
 - (3) If no residents as described within Section 14(a) (1) or (2) are qualified or can be qualified within a reasonable amount of time, City residents who reside outside the City Targeted Zip Codes;
 - (4) If no residents as described within Sections 14(a) (1), (2) or (3) are qualified or can be qualified within a reasonable amount of time, County residents who live within one (1) of the five (5) zip codes with the highest poverty rate in the County ("County Targeted Zip Codes"); and
 - (5) If no residents as described within Sections 14(a) (1)-(4) are qualified or can be qualified within a reasonable amount of time, residents in the County who reside outside of the County Targeted Zip Codes.



The Parties agree that individuals will be employed based on the hierarchy established in Section 14(a). For purposes of clarity, the intent of Section 14(a) is to encourage the Developer and the Contractor to hire as many qualified persons who reside in the City to work on the Project.

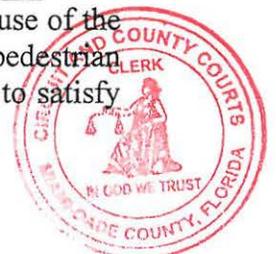
- (b) The Contractor shall electronically post job opportunities in established job outreach websites and organizations, including, without limitation, Youth Co-Op, Inc., South Florida Workforce, Florida Department of Economic Opportunity Career Source of South Florida located in Miami, their successors or assigns, and similar programs in order to attract as many eligible minority applicants for such jobs as possible.
- (c) In connection with the work performed by the Developer, the Developer shall cause the Contractor to pay a minimum hourly wage rate of twelve dollars and eighty three cents (\$12.83) if health benefits are not provided to employees and eleven dollars and fifty eight cents (\$11.58) if health benefits are provided to employees. Commencing January 1st, 2018 and for the duration of the Project ("CPI Escalation Year"), the foregoing hourly rates shall be increased on January 1st of the applicable calendar year by an amount equal to the percentage increase during the calendar year immediately prior to the CPI Escalation Year in the consumer price index ("Index"), which is the monthly index published by the Bureau of Labor Statistics of the United States Department of Labor as the Consumer Price Index for All Items, Miami-Ft. Lauderdale, Florida, Base Year 1982-84=100. The CPI adjustment to the minimum hourly wage rates shall hereinafter be referred to as the "CPI Escalation". The CPI Escalation of the minimum hourly wage rates for the CPI Escalation Year shall be equal to the minimum hourly wage rates in effect for the calendar year immediately preceding the CPI Escalation Year multiplied by the CPI Percentage (as defined below). The "CPI Percentage" shall equal the fraction (i) whose numerator equals the monthly Index published immediately prior to the CPI Escalation Year (or the nearest reported previous month) and (ii) whose denominator is the same monthly Index published immediately prior to the calendar year that preceded the CPI Escalation Year (or the nearest reported previous month). If the Index is discontinued with no successor Index, the City shall select a commercially reasonable comparable index. The CPI adjustment set forth herein shall not result in a reduction of the respective minimum hourly wage rates.
- (d) The Developer shall require the Contractor to include the same minimum hourly wage rates in any contracts entered into by the Contractor with its subcontractors for the Project who will stipulate and agree that they will pay the same minimum hourly wage rates, subject to adjustment, as set forth in this section.
- (e) Local Workforce Participation during Construction. At least twenty-five percent (25%) of those employed by the general contractor or



subcontractor(s) for construction work shall be employed utilizing the following priorities: first, residents of the following three (3) area zip codes: 33130, 33128 and 33135; second, residents of the five (5) highest poverty rate index zip codes in the City; third, City residents in general; fourth, County residents who live in the five (5) highest poverty rate index zip codes in the County; and fifth, residents in the County in general. Residents who live in qualifying areas must receive preference for hiring in the Project.

- (f) Job Opportunity Advertisement. The Developer must provide ten (10) full-page weekly advertisements in the *Diario de las Americas* newspaper to inform residents of job opportunities and job fairs prior to construction commencement. This shall be in addition to advertisements done through other job outreach websites, organizations, and efforts.
- (g) Community Business Enterprise (“CBE”), Community Small Business Enterprise (“CSBE”), and Small Business Enterprise (“SBE”).
 - (1) Seven and one half percent (7.5%) of the professional services agreements for soft costs including, but not limited to, design, engineering, survey, inspection, testing, and legal, shall be awarded to firms certified by the County as CBE, CSBE, and SBE firms at the time the contract is signed.
 - (2) The Developer shall award ten percent (10%) of the contractual agreements for construction and construction-related materials, supplies and fixtures to firms certified by the County as CBE, CSBE, and SBE firms at the time the contract is signed.
- (h) Job Creation Monitoring Contract. Within sixty (60) days prior to issuance of a Permit for vertical improvements, the Developer will designate a firm who shall be CBE/CSBE/SBE certified whom will be designated to monitor the Local Workforce Participation, Job Opportunity Advertisement, and CBE/CSBE/SBE requirements.
- (i) The City and the Developer understand and agree that any uses or improvements by the Developer of public areas previously financed by the City through tax-exempt bonds at Jose Marti Park areas and/or City-owned streets, sidewalks, and rights of way areas shall require review by the City Attorney and the City’s Bond Counsel regarding necessary ongoing compliance with U.S. Department of the Treasury Internal Revenue Service rules and regulations.

Section 12. Construction of encroachments within the Public Right-of-Way. The City finds that the encroachments proposed by the Developer do not unduly restrict the use of the public right-of-way and are a necessary, essential element in the construction of the pedestrian overpasses above the same rights-of-way. The adoption of this Agreement shall serve to satisfy



the requirements set forth in Section 55-14(b) of the City Code. The City hereby agrees to expeditiously sign off on all permits as owner of the City-owned Property that are the public rights-of-way and Jose Marti Park, including but not limited to Public Works permits, bulkhead permits, and State permits with respect to submerged lands as may be required to effectuate the SAP and Project plans. The Developer represents to the City that it has, or will obtain, all necessary authorizations from the State regarding the State-owned submerged lands. Notwithstanding the requirements of Section 55-14(c) of the City Code, the City agrees to waive any and all claims to payment of a user fee in connection with the construction of the aforementioned encroachments within the public rights-of-way. Further, this Agreement shall satisfy the requirements of Section 55-14(d) of the City Code. In consideration for authorizing the construction of the aforementioned encroachments, the Developer further covenants to:

- (a) Maintain the above-grade pedestrian overpasses in accordance with the Florida Building Code, City Charter and Code.
- (b) Provide an insurance policy, in an amount determined by the City's risk manager, naming the City and the State, regarding the State-owned submerged lands, as additional insureds for public liability and property damage. The insurance shall remain in effect for as long as the encroachment(s) exist above the City-owned Property, including the right-of-way(s) and the State-owned Submerged Lands. Should the Developer fail to continuously provide the insurance coverage, the City shall have the right to secure similar insurance policy in its name and place a special assessment lien against the owner's abutting private property for the total cost of the premium. The Developer acknowledges and agrees that it will comply with all insurance coverages required by the State regarding the State-owned Submerged Lands.
- (c) The Developer shall hold harmless and indemnify the City, the State, as applicable, and their respective officials and employees from any claims for damage or loss to property and injury to persons of any nature whatsoever arising out of the use, construction, and development of the Miami River SAP, including without limitation maintenance or removal of the pedestrian overpasses and from and against any claims which may arise out of the granting of permission for the encroachment or any activity performed under the terms of this Agreement.

Section 13. Signage. The Project will need to comply with all applicable Federal, State, County and City signage rules, laws, orders, regulations, statutes, or ordinances. Permitted signage will accomplish the following goals: (i) moving pedestrians and vehicle traffic throughout the Property safely and efficiently; (ii) promoting safe and efficient pedestrian traffic within the property; and (iii) properly identifying the Property. The Signage Program will include, but is not limited to, the following sign types: (i) directional signage; (ii) ground signage; (iii) wall signage; (iv) monument signage; and (v) tower signage, some or all of which may incorporate LCD, LED, or similar electronic technology if approved and legally authorized. The Signage Program shall apply to signage visible from public rights-of-way. The Signage Program shall not apply to signage internal to the Project or not otherwise visible from the public right-of-way. Signage shall be approved by Warrant as described in Article 7 of Miami



21.

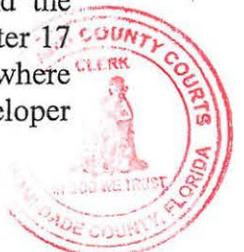
Section 14. Parking. The Developer intends to establish a uniform valet system to service the Project. Notwithstanding the limitations set forth in Sections 35-305 of the Code, a maximum of three (3) valet permits may be issued for the operation of a valet parking ramp on the same side of the block where the permit applicant is the operator of the uniform valet system. Robotic parking within enclosed parking structures shall be permitted.

Section 15. Seawall. The Developer shall be responsible for any repairs to the seawall on the Property in compliance with the standards set forth by the Army Corps of Engineers and the City Code. The Developer shall increase the upland grade elevations to no less than four and one half feet 4.5' NAVD along the Riverwalk within the Property and six feet 6.0' NAVD adjacent to any mixed use parcel containing residential uses within the Property as a condition to development so as to address the pertinent City and County goals, objectives and policies related to Coastal High Hazard Areas. The City hereby agrees to serve as co-applicant and/or applicant, as required, and expeditiously sign any permit applications required to effectuate the repair and reconstruction of the seawall, bulkhead and site grade elevation. The Developer hereby agrees to obtain, as necessary, all applicable permissions or approvals from the State regarding any repairs and construction involving the State-owned submerged lands. In addition, the Developer will construct the bulkhead elevation of up to six and one half feet (6.5') on the Property where five and one half feet (5.5') is typically required, pursuant to the variance granted on July 2, 2015 subject to the conditions that the bulkhead transition from the end of the proposed Riverwalk to the existing walkway at the end of SW 3 Avenue in compliance with ADA slope regulations (Section 4.8.2, CFR) and that the proposed bulkhead cap shall be extended through the transition area matching the slope of the Riverwalk/walkway transition and providing a six (6) inch vertical reveal.

Section 16. Retail Specialty Center Designation. Pursuant to Chapter 4 of the Code, the Miami River SAP is designated as a "Retail Specialty Center".

Section 17. Alcoholic Beverage Sales. The Property is located within the D3 and T6-36B-O zoning transects as designated under Miami 21. Notwithstanding the requirements of Section 4-3.2 of the Code, Planning and Zoning Advisory Board, and City Commission approval shall not be required for bars (including taverns, pubs, and lounges), nightclubs, and supper clubs as principal uses proposed to be located within the Miami River SAP Project. Said establishments shall be authorized pursuant to the issuance of a Warrant (currently requires Exception). The Planning & Zoning Director shall consider the criteria set forth in Section 4-3.2.1 of the City Code when evaluating such Warrant applications. There shall be a maximum of ten (10) individual alcohol beverage establishments permitted within the Miami River SAP area.

Section 18. Environmental. The City finds that the Project will confer a significant net improvement upon the publicly accessible tree canopy in the area. The City and the Developer agree that the Developer will comply with the intent and requirements of Chapter 17 of the City Code by performing tree replacement within the SAP Application Area where possible. Where replacement within the SAP Application Area is not possible, the Developer



shall perform tree replacement within Jose Marti Park. Where replacement within Jose Marti Park is not possible, the Developer shall perform the required tree replacement within one (1) mile of the SAP Application Area or within any other City park, subject to approval by the City. The City further agrees to facilitate the permitting and planting of replacement trees on all publicly owned property within the area and within City parks.

Section 19. Archaeological. Due to the Project’s classification of High Probability in an Archaeological Conservation Area, the Developer shall obtain a “Certificate to Dig” prior to any ground disturbing activities, pursuant to Chapter 23 of the City Code.

Section 20. Public Facilities. As of the Effective Date, the Developer shall conduct an extensive analysis of the Public Facilities available to serve the Project. In the event that the Existing Zoning and/or the Comprehensive Plan require the Developer to provide Public Facilities to address any deficiencies in required levels of service occasioned by future development within the SAP Application Area or as a result of the development of the Project, the Developer shall provide such Public Facilities consistent with the timing requirements of Sections 163.3180, Florida Statutes (2014), or as otherwise required by Chapter 13 of the City Code, as amended from time to time, if applicable. The Developer shall be bound by the City impact fees and assessments in existence as of the Effective Date of this Agreement.

Section 21. Release of Existing Ordinance 11000 Covenants. Upon approval of this Development Agreement by the City Commission, the Planning Director shall release two (2) Declarations of Restrictive Covenants recorded in the public records of Miami-Dade County related to prior development approvals for portions of the SAP Application Area. The first Declaration of Restrictive Covenants is recorded at Official Record Book 24194 at Page 1806 of the Public Records of Miami-Dade County, and was proffered along with a rezoning application for a portion of the project area, corresponding with the parcels in the middle section of the Project area. The second Declaration of Restrictive Covenants is recorded at Official Record Book 24997 at Page 2543 of the Public Records of Miami-Dade County, and was proffered along with a rezoning application for a portion of the southern section of the Project area.

Section 22. Compliance with Fire/Life Safety Laws. The Developer shall at all times in the development and operation of the Project comply with all applicable laws, ordinances and regulations including life safety codes to insure the safety of all Project and City residents and guests. Specifically and without limitation, the Developer will install and construct all required fire safety equipment and water lines with flow sufficient to contain all possible fire occurrences.

Section 23. Local Development Permits. The Project may require additional permits or approvals from the City, County, State, or Federal government and any division thereof. Subject to required legal processes and approvals, the City shall make a good faith effort to take all reasonable steps to cooperate with and facilitate all such approvals, including acting as an applicant. Such approvals include, without limitation, the following approvals and permits and any successor or analogous approvals and permits:

- (a) Subdivision plat and/or waiver of plat approvals;



- (b) Covenant or Unity of Title acceptance and the release of the two (2) existing Declarations of Restrictions;
- (c) Building, Public Works and Bulkhead permits;
- (d) Certificates of use and/or occupancy;
- (e) Stormwater Permits; and
- (f) Any other official action of the City, County, or any other government agency having the effect of permitting development of the Property.

In the event that the City substantially modifies its land development regulations regarding site plan approval procedures, authority to approve any site plan for a project in the SAP Application Area shall be vested solely in the City Manager, with the recommendation of the Planning and Zoning Director. Any such site plan shall be approved if it meets the requirements and criteria of the Zoning, the Comprehensive Plan and the terms of this Agreement.

Section 24. Consistency with Comprehensive Plan. The City finds that development of the Miami River SAP is in conformity with the Existing Zoning and is consistent with the Comprehensive Plan. In the event that the Existing Zoning or the Comprehensive Plan requires the Developer to provide additional Public Facilities to accommodate the Project, the development will provide such Public Facilities consistent with the timing requirements of Section 163.3180, Florida Statutes (2014). The Developer shall be bound by the City impact fees and assessments in existence as of the date of obtaining a building permit, per Chapter 13 of the Code.

Section 25. Necessity of Complying with Regulations Relative to Development Permits. The parties agree that the failure of this Agreement to address a particular permit, condition, fee, term license or restriction in effect on the Effective Date shall not relieve the Developer of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms, licenses, or restrictions.

Pursuant to Section 163.3241, Florida Statutes (2014), if state or federal laws are enacted after the execution of this development agreement which are applicable to and preclude the parties' compliance with the terms of this development agreement, this Agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws.

Section 26. Cooperation; Expedited Permitting and Time is of the Essence. The Parties agree to cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Agreement. The Parties agree that time is of the essence in all aspects of their respective and mutual responsibilities pursuant to this Agreement. The City shall use its best efforts to expedite the permitting and approval process in an effort to assist the Developer in achieving its development and construction milestones. The City will accommodate requests from the Developer's general contractor and subcontractors for review of phased or multiple permitting packages, such as those for excavation, site work and foundations, building shell,



core, and interiors. In addition, the City will designate an individual within the City Manager's Office who will have a primary (though not exclusive) duty to serve as the City's point of contact and liaison with the Developer in order to facilitate expediting the processing and issuance of all permit and license applications and approvals across all of the various departments and offices of the City which have the authority or right to review and approve all applications for such permits and licenses.

Notwithstanding the foregoing, the City shall not be obligated to issue development permits to the extent the Developer does not comply with the applicable requirements of the Zoning, the Comprehensive Plan, this Agreement and applicable building codes.

Section 27. Reservation of Development Rights.

- (a) For the term of this Agreement, the City hereby agrees that it shall permit the development of the SAP Application Area in accordance with the Comprehensive Plan, Miami 21, the Miami River SAP Regulating Plan, and this Agreement.
- (b) Nothing herein shall prohibit an increase in the density or intensity of development permitted in the SAP Application Area in a manner consistent with (a) Miami 21 and the Miami River SAP, and/or the Comprehensive Plan, (b) any zoning change subsequently requested or initiated by the Developer in accordance with applicable provisions of law or (c) any zoning change subsequently enacted by the City.
- (c) The expiration or termination of this Agreement shall not be considered a waiver of, or limitation upon, the rights, including, but not limited to, any claims of vested rights or equitable estoppel, obtained or held by the Developer or its successors or assigns to continue development of the Property in conformity with Existing Zoning and all active prior and subsequent development permits or development orders granted by the City.

Section 28. Annual Review. This Agreement shall be reviewed annually on the anniversary of the effective date of this agreement. The Applicant, Developer, or its assign, shall submit an annual report to the City Planning and Zoning Director for review at least 30-days prior to the annual review date. The report shall contain a section by section listing of what obligations have been met and the date finalized as good faith compliance with the terms of the agreement. The City Manager and Planning and Zoning Director shall review the annual report and accept it if found to be in compliance. The failure to submit the annual report shall not constitute a basis to find the Developer is not in compliance with the Development Agreement as provided in 163.3235, Florida Statutes, as amended.

If the City finds, on the basis of substantial competent evidence that there has been a failure to comply with the terms of the agreement, the City shall provide the (Applicant) with a fifteen (15) day written notice and an opportunity the cure the non-compliance. The (Applicant) shall have 45-days after the expiration of the 15-day notice period to begin to address or cure the non-compliance, after which the Agreement may be revoked or modified by the City Commission following an advertised public hearing. The Developer's commitment to submit an annual report shall conclude upon the date on which the agreement is terminated.



Section 29. Notice. All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing and delivered by personal service or sent by United States Registered or Certified Mail, return receipt requested, postage prepaid, or by overnight express delivery, such as Federal Express, to the Parties at the addresses listed below. Any notice given pursuant to this Agreement shall be deemed given when received. Any actions required to be taken hereunder which fall on Saturday, Sunday, or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday or legal holiday.

To the City:

City Manager, City of Miami
3500 Pan American Drive
Miami, FL 33133

With a copy to:

City Attorney, City of Miami
Miami Riverside Center
444 S.W. 2nd Ave., 9th Floor
Miami, FL 33130

To the Developer:

CG Miami River, LLC
Attn: Ari Pearl
2915 Biscayne Boulevard, Ste 300
Miami, FL 33137

With a copy to:

Bercow Radell & Fernandez, PLLC
Attn: Melissa Tapanes Llahues, Esq.
200 S. Biscayne Boulevard, Ste 850
Miami, FL 33131

Any Party to this Agreement may change its notification address (es) by providing written notification to the remaining parties pursuant to the terms and conditions of this section.

Section 30. Multiple Ownership. In the event of multiple ownership subsequent to the approval of the Application, each of the subsequent owners, mortgagees and other successors in interest in and to the Property (or any portion thereof, including condominium unit owners) shall be bound by the terms and provisions of this Agreement as covenants that run with the Property.

Section 31. Common Area Maintenance. A maintenance and indemnification



Covenant to run with the land, in a form approved by the City Attorney, shall be required for any non-standard improvements and public amenities located within the public right-of-ways. Said Covenant shall identify a single person or single entity as the responsible party for all such non-standard improvements and public amenities located in the public right of way included in the Special Area Plan. The Developer will create prior to the conveyance of any portion of the Property (less than the entire Property), an association or other entity which shall provide for the maintenance of all common areas, private roadways, cross-easements and other amenities common to the Property. This Agreement shall not preclude the owner(s) of the Property from maintaining their own buildings or common areas not common to the Property outside the control of the association. The instrument creating the association or other entity shall be subject to the reasonable approval of the City Attorney.

Section 32. Modification. In accordance with the Project plans, the Project will be developed in five (5) Phases. This Agreement may be modified, amended or released as to Phase 1, or any portion thereof, by a written instrument executed by the, then, owner(s) of Phase 1 including joinders of all mortgagees, if any, provided that the same is also approved by the City, after public hearing. Any public hearing application related to Phase 1, or any portion thereof, shall only require the consent, acknowledgment and/or joinder of the then owner(s) of Phase 1. This Agreement may be modified, amended or released as to Phase 2, or any portion thereof, by a written instrument executed by the, then, owner(s) of Phase 2, including joinders of all mortgagees, if any, provided that the same is also approved by the City, after public hearing. Any public hearing application related to Phase 2, or any portion thereof, shall only require the consent, acknowledgment and/or joinder of the then owner(s) of Phase 2. This Agreement may be modified, amended or released as to Phase 3, or any portion thereof, by a written instrument executed by the, then, owner(s) of Phase 3, including joinders of all mortgagees, if any, provided that the same is also approved by the City, after public hearing. Any public hearing application related to Phase 3, or any portion thereof, shall only require the consent, acknowledgment and/or joinder of the then owner(s) of Phase 3. This Agreement may be modified, amended or released as to Phase 4, or any portion thereof, by a written instrument executed by the, then, owner(s) of Phase 4, including joinders of all mortgagees, if any, provided that the same is also approved by the City, after public hearing. Any public hearing application related to Phase 4, or any portion thereof, shall only require the consent, acknowledgment and/or joinder of the then owner(s) of Phase 4. This Agreement may be modified, amended or released as to Phase 5, or any portion thereof, by a written instrument executed by the, then, owner(s) of Phase 5, including joinders of all mortgagees, if any, provided that the same is also approved by the City, after public hearing. Any public hearing application related to Phase 5, or any portion thereof, shall only require the consent, acknowledgment and/or joinder of the then owner(s) of Phase 5. In the event that there is a recorded homeowners or condominium association covering any portion of Phases 1, 2, 3, 4, 5, or any portion thereof, said association may (in lieu of the signature or consent of the individual members or owners), on behalf of its members and in accordance with its articles of incorporation and bylaws, consent to any proposed modification, amendment, or release by a written instrument executed by the homeowners or condominium association. Any consent made pursuant to a vote of the homeowners or condominium association shall be evidenced by a written resolution of the homeowners or condominium association and a certification executed by the secretary of the homeowners or condominium association's board of directors affirming



that the vote complied with the articles of incorporation and the bylaws of the association.

Section 33. Enforcement. The City, its successors or assigns, and the Developer, its successors or assigns, shall have the right to enforce the provisions of this Agreement. Enforcement shall be by action at law or in equity against any parties or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages or both.

Section 34. Authorization to Withhold Permits and Inspections. In the event the Developer is obligated to make payments or improvements under the terms of this Agreement or to take or refrain from taking any other action under this Agreement, and such obligations are not performed as required, in addition to any other remedies available, the City is hereby authorized to withhold any further permits, and refuse any inspections or grant any approvals, for the specific Phase of development the outstanding obligations relate to until such time as this Agreement is complied with.

Section 35. Emergency Management and Mitigation Plan. Prior to the issuance of a Certificate of Occupancy, Temporary Certificate of Occupancy ("TCO"), or the equivalent for the first new single-use building in the SAP Application Area, the Developer, as required by the City's Comprehensive Plan (Policy CM4.3.4.) shall enter into a binding agreement with the City regarding an Emergency Management and Mitigation Plan ("Emergency Plan") detailing how the safety of people and property shall be accounted for and maintained in the event of a natural disaster, fire, act of God, or other similar event. The Emergency Plan shall detail vehicle and pedestrian circulation, security systems, and other preventative and protective measures and mitigation readily available in the SAP Application Area. The Developer, or its successors, heirs, or permitted assigns, shall provide an updated copy of the Emergency Plan prior to the issuance of a TCO or equivalent for each new building in the future.

Section 36. Exclusive Venue, Choice of Law, Specific Performance. It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall exclusively in a court of competent jurisdiction in the County. In addition to any other legal rights, the City and the Developer shall each have the right to specific performance of this Agreement in court. Each party shall bear its own attorney's fees. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction. The Parties irrevocably waive any rights to a jury trial.

Section 37. Voluntary Compliance. The Parties agree that in the event all or any part of this Agreement is struck down by judicial proceedings or preempted by legislative action, the Parties shall continue to honor the terms and conditions of this Agreement to the extent allow by law.

Section 38. Severability. Invalidation of any of the sections, terms, conditions,



provisions, or covenants, of this Agreement by judgment of court in any action initiated by a third party, in no way shall affect any of the other provisions of this Agreement, which shall remain in full force and effect.

Section 39. Events of Default.

- (a) The Developer shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period: the Developer fails to perform or breaches any term, covenant, or condition of this Agreement which is not cured within thirty (30) days after receipt of written notice from the City specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, then the Developer shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.
- (b) The City shall be in default under this Agreement if the City fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within thirty (30) days after receipt of written notice from the Developer specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, the City shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.
- (c) It shall not be a default under this Agreement if either party is declared bankrupt by a court of competent jurisdiction. All rights and obligations in this Agreement shall survive such bankruptcy of either party. The Parties hereby forfeit any right to terminate this Agreement upon the bankruptcy of the other party.

Section 40. Remedies Upon Default.

- (a) Neither party may terminate this Agreement upon the default of the other party, but shall have all of the remedies enumerated herein.
- (b) Upon the occurrence of a default by a party to this Agreement not cured within the applicable grace period, the Developer and the City agree that any party may seek specific performance of this Agreement, and that seeking specific performance shall not waive any right of such party to also seek monetary damages, injunctive relief, or any other relief other than termination of this Agreement. The City hereby acknowledges that any claim for damages under this Agreement is not limited by sovereign immunity or similar limitation of liability.

Section 41. Obligations Surviving Termination Hereof. Notwithstanding and prevailing over any contrary term or provision contained herein, in the event of any lawful termination of this Agreement, the following obligations shall survive such termination and continue in full force and effect until the expiration of a one (1) year term following the earlier of the effective date of such termination or the expiration of the Term: (i) the exclusive venue



and choice of law provisions contained herein; (ii) rights of any party arising during or attributable to the period prior to expiration or earlier termination of this Agreement, and (iii) any other term or provision herein which expressly indicates either that it survives the termination or expiration here of or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

Section 42. No Oral Change or Termination. This Agreement and the exhibits and appendices appended hereto and incorporated herein by reference, if any, constitute the entire Agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements or understandings between the Parties with respect to the subject matter hereof, and no change, modification, or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Agreement cannot be changed or terminated orally.

Section 43. Lack of Agency Relationship. Nothing contained herein shall be construed as establishing an agency relationship between the City and the Developer and neither Developer nor its employees, agents, contractors, subsidiaries, divisions, affiliates or guests shall be deemed agents, instrumentalities, employees, or contractors of the City for any purpose hereunder, and the City, its officials, contractors, agents, and employees shall not be deemed contractors, agents, or employees of the Developer or its subsidiaries, divisions or affiliates.

Section 44. Successor(s), Assigns, and Designees. The covenants and obligations set forth in this Agreement shall extend to the Developer, its successor(s) and/or assigns. Nothing contained herein shall be deemed to be a dedication, conveyance or grant to the public in general nor to any persons or entities except as expressly set forth herein.

Section 45. Third Party Defense. The City and the Developer shall each, at their own cost and expense, vigorously defend any claims, suits or demands brought against them by third parties challenging the Agreement or the Project, or objecting to any aspect thereof, including, without limitation, (i) a consistency challenge pursuant to Section 163.3215, Florida Statutes (2014), (ii) a petition for writ of certiorari, (iii) an action for declaratory judgment, or (iv) any claims for loss, damage, liability, or expense (including reasonable attorneys' fees). The City and the Developer shall promptly give the other written notice of any such action, including those that are pending or threatened, and all responses, filings, and pleadings with respect thereto.

Section 46. No Third-Party Beneficiary. No persons or entities other than the Developer and the City, permitted successors and assigns, shall have any rights whatsoever under this Agreement.

Section 47. Recording. This Agreement shall be recorded in the Public Records of Miami-Dade County, Florida at the Developer's expense and shall inure to the benefit of the City. A copy of the recorded Development Agreement shall be provided to the City Clerk and City Attorney within two (2) weeks of recording.



Section 48. Representations; Representatives. Each party represents to the others that this Agreement has been duly authorized, delivered, and executed by such party and constitutes the legal, valid, and binding obligation of such party, enforceable in accordance with its terms.

Section 49. No Exclusive Remedies. No remedy or election given by any provision in the Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in addition to all other remedies of law or equity arising from such event of default, except where otherwise expressly provided.

Section 50. No Conflict of Interest. The Developer agrees to comply with Section 2-612 of the City Code as of the Effective Date, with respect to conflicts of interest.

Section 51. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

NOW, WHEREOF, the City and the Developer have caused this Agreement to be duly executed.

[Execution Pages for the City and the Developer Follow]



City of Miami, a Florida municipal corporation

By: [Signature]
Daniel J. Alfonso, City Manager

Approved as to Insurance Requirements:
By: [Signature]
Anne-Marie Sharpe, Risk Management Director

ATTEST:
By: [Signature]
Todd Hanhon, City Clerk

Approved as to Form and Correctness:
By: [Signature]
Victoria Méndez, City Attorney
15-1386
RJR
5/8/16

STATE OF Florida)
COUNTY OF Miami Dade) SS

The foregoing instrument was acknowledged before me this
17 day of February, 2016 by
Daniel J. Alfonso, City Manager of the City Miami, Florida, who is the _____ if
the City and who is
personally known to me or (X) produced a valid driver's license
as identification.

Notary Public: [Signature]
Sign Name: [Signature]
Print Name: Sandra Rivera

My Commission Expires:

[NOTARIAL SEAL]

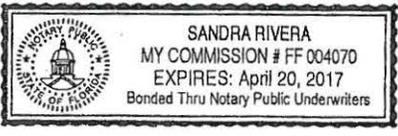


Exhibit A
Developer's Property

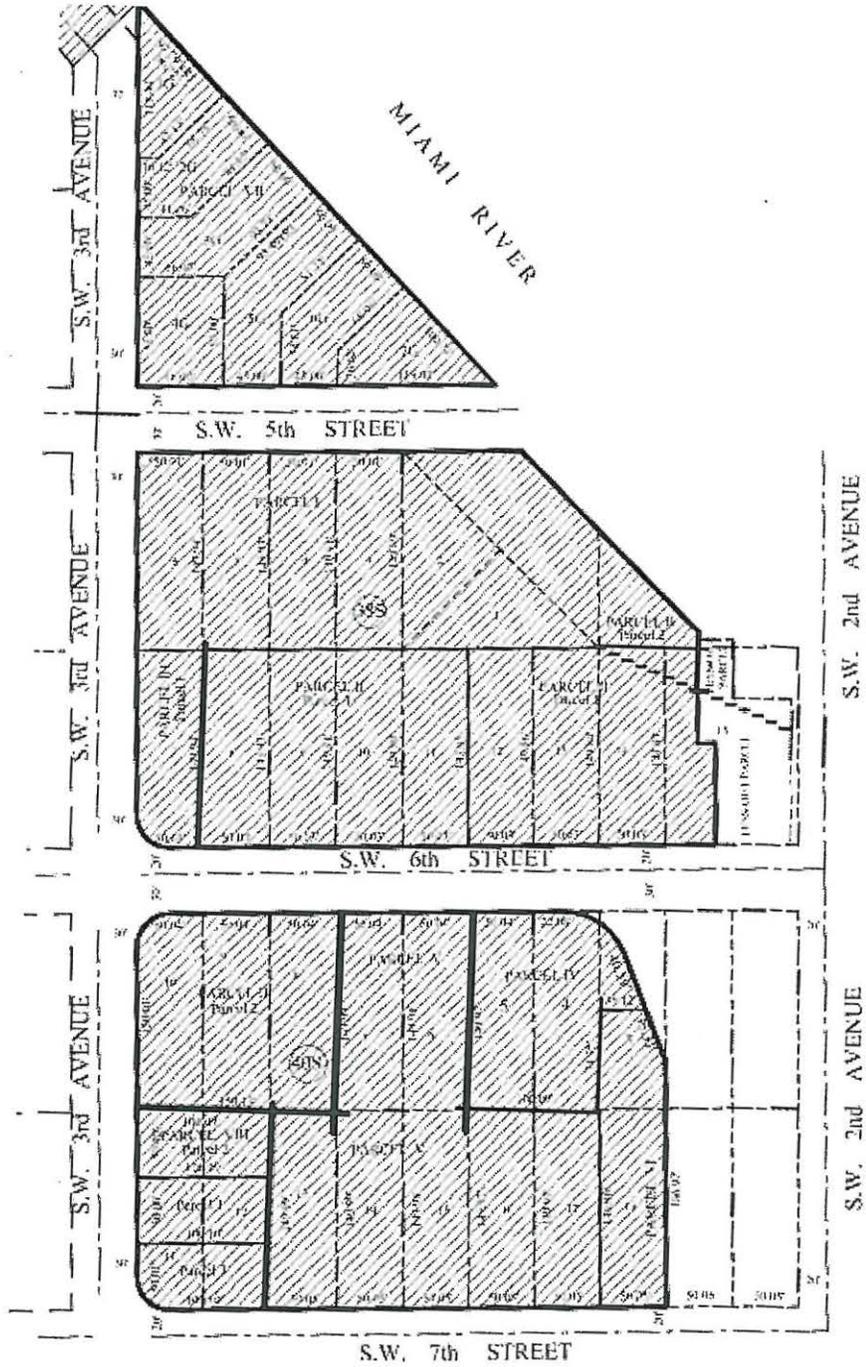


Exhibit A
Legal Description of Properties

PARCEL I:

Commencing at the North corner of Lot 2, Block 38 South in the City of Miami, Florida, according to the Plat thereof recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida; running thence East along the South line of Southwest Fifth Street in said City produced East to its intersection with the low water line of the Miami River, running thence Southeastly meandering the low water line of said River to the point where the East line of Lot 13 of said Block 38 South produced North intersects with said low water line, running thence South to the East corner of Lot 1 of said Block 38 South, running thence Northwestly along the lot lines of said Lots 1 and 2 of said Block 38 South to the point or place of beginning, also submerged land lying between the above described property and the channel of the Miami River.

AND

Lots 1, 2, 3, 4, 5 and 6, in the North portion of Block 38 South, City of Miami, County of Miami-Dade, State of Florida, according to the Plat thereof recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida.

PARCEL II:

Parcel 1:

Lots 12, 13, 14 and 15, in Block 38 South, of Map of Miami Dade Co., Fla., according to the Plat thereof, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida.

LESS-OUT LEGAL DESCRIPTION:

That part of Lot 15, Block 38 South, of Map of Miami Dade County, Fla., according to the Plat thereof, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida, in Section 38, Township 54 South, Range 41 East.

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commence at the Southwest corner of Lot 12, Block 38 South, of said Map of Miami Dade County, Florida; thence along the South boundary of said Lot 12 and along the South boundary of Lots 13, 14 and 15 of said Block 38 South, also being the Northerly right of way line of S.W. 6th Street North 87°51'41" East for 188.15 feet to the Point of Beginning; thence North 02°15'42" West for 76.98 feet; thence South 87°44'18" West for 13.34 feet; thence North 02°15'42" West for 40.40 feet to the Northerly boundary of said Lot 15; thence along said Northerly boundary South 68°39'25" East for 76.78 feet to a point on a line lying 25 feet West of and parallel with the City of Miami monument line for S.W. 2nd Avenue, also being the Westerly right of way line of S.W. 2nd Avenue; thence along said line South 02°16'29" East for 6.82 feet; thence continuing along said line South 02°15'42" East for 79.84 feet to a point on the aforesaid South boundary of said Lot 15; thence along said boundary, also being the Northerly right of way line of S.W. 6th Street, South 87°51'41" West for 57.02 feet to the Point of Beginning.

AND

That part of a parcel of land being a portion of Section 38, Township 54 South, Range 41 East, Miami-Dade County, Florida.

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commence at the Southwest corner of Lot 12, Block 38 South, of Map of Miami-Dade County, Florida, according to the Plat thereof, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida; thence along the South boundary of said Lot 12 and along the South boundary of Lots 13, 14, and 15 of said Block 38 South, also being the Northerly right of way line of S.W. 6th Street, North 87°51'41" East for 188.15 feet; thence North 02°15'42" West for 76.98 feet; thence South 87°44'18" West for 13.34 feet; thence continue North 02°15'42" West for 40.40 feet to the Northerly boundary of said Lot 15 and the Point of Beginning; thence North 02°15'42" West for 38.29 feet; thence North 87°49'38" East for 26.61 feet; thence South 02°19'28" East for 44.96 feet; thence North 87°50'00" East for 43.81 feet to a point on a line lying 25.0 feet West of and parallel with the City of Miami monument line for S.W. 2nd Avenue; thence along said line, South 02°15'29" East for 23.96 feet to a point of the aforesaid Northerly boundary of Lot 15; thence along said Northerly boundary North 68°39'25" West for 76.78 feet to the Point of Beginning.

Parcel 2:

A portion of South River Drive, of Map of Miami, Dade Co. Fla., according to the Plat thereof, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida, being vacated by ordinance 688 from November 15, 1926, being more particularly described as follows:

Commence at the Southwest corner of Lot 12, Block 38 South, of Map of Miami, Dade Co. Florida; thence North 87°51'41" East along the South boundary of said Lot 12 and along the South boundary of Lots 13, 14 and 15 of said Block 38 South, also being the Northerly right of way line of S.W. 6th Street, North 87°51'41" East for 188.15 feet; thence North 02°15'42" West for 76.98 feet; thence South 87°44'19" West for 13.34 feet; thence North 02°15'42" West 40.40 feet to a point on the Northerly boundary of said Lot 15 and the Point of Beginning; thence continue North 02°15'42" West for 45 feet, more or less, to a point on the North line of said South River Drive; thence meander Northwestly along said North line for 108 feet, more or less, to a point on the Northerly extension of the East line of Lot 13, of said Block 38 South; thence South 02°02'03" East along said Northerly extension of Lot 13, for 89 feet to the East corner of Lot 1, also being the Northeast corner of Lot 13; thence South 68°39'27" East along the North line of Lots 14 and 15 for 158.36 feet to the Point of Beginning.

Parcel 3:

Lots 8, 9, 10 and 11, in Block 38, of City of Miami South, according to the Map of Miami Dade County, Florida, recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida.



Exhibit A
Legal Description of Properties

PARCEL III:

Parcel 1:

Lot 7, Block 38 South, CITY OF MIAMI, according to the Plat thereof, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida.

Parcel 2:

Lots 8, 9 and 10, Block 40 South, CITY OF MIAMI, according to the Plat thereof, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida.

LESS

That portion of Lot 10, Block 40 S of "A. L. KNOWLTON MAP OF MIAMI", according to the Plat thereof, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida, bounded by the North line of said Lot 10, said line also being the South right-of-way line of S.W. 6th Street and by the West line of said Lot 10, said line also being the East right-of-way line of S.W. 3rd Avenue and by an arc concave to the Southeast and tangent to the last described two lines.

PARCEL IV:

Lots 4 and 5, Block 40 South, CITY OF MIAMI, according to the Plat thereof, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida.

AND

Commencing at the Northwestern corner of Lot 3, Block 40S, A. L. KNOWLTON MAP OF MIAMI, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida, thence run Southwardly along the Westerly line of said Lot 3, for a distance of nine and ninety-seven hundredths (9.97) feet to a point, said point being the Point of Beginning of the hereinafter described parcel of land; thence continue Southwardly along the Westerly line of said Lot 3, for a distance of sixty-five and one hundredth (65.01) feet to a point, said point being seventy-five (75) feet, more or less, Northerly of the Southwesterly corner of said Lot 3; thence deflecting to the left 90°06'05" run along a line seventy-five (75.00) feet, more or less, Northerly of and parallel with the Southerly line of said Lot 3, for a distance of thirty-five and fifty-eight hundredths (35.58) feet to a point; thence deflecting to the left 111°26'45" run Northwestwardly for a distance of forty-six and fifty-nine hundredths (46.59) feet to a point of curve; thence run Northwestwardly along the arc of a curve to the left having a radius of fifty (50.00) feet and a central angle of 31°32'21" for a distance of twenty-seven and fifty-two hundredths (27.52) feet to the point of intersection with the Westerly line of said Lot 3, said point being the Point of Beginning.

LESS:

Commencing at the Northwestern corner of Lot 4, Block 40S, A. L. KNOWLTON MAP OF MIAMI, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida, thence run Eastwardly along the Northerly line of said Lot 4, for a distance of twenty-two and eight hundredths (22.08) feet to a point of curve, said point of curve being the Point of Beginning; thence run Southeastwardly along the arc of a curve to the right having a radius of fifty (50.00) feet and a central angle of 36°49'09" for a distance of thirty-two and thirteen hundredths (32.13) feet to a point of intersection with the Easterly line of said Lot 4; thence run Northwardly along the Easterly line of said Lot 4, for a distance of nine and ninety-seven hundredths (9.97) feet to the Northeasterly corner of said Lot 4; thence deflecting to the left 89°53'06" run Westwardly along the Northerly line of said Lot 4, for a distance of Twenty-seven and ninety-five hundredths (27.95) feet to the Point of Beginning.

ALSO KNOWN AS:

Commencing at the Northwestern corner of Lot 3, Block 40S, A. L. KNOWLTON MAP OF MIAMI, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida, thence run Southwardly along the Westerly line of said Lot 3, for a distance of nine and ninety-seven hundredths (9.97) feet to a point, said point being the Point of Beginning of the hereinafter described parcel of land; thence continue Southwardly along the Westerly line of said Lot 3, for a distance of sixty-five and one hundredth (65.01) feet to a point, said point being seventy-five (75.00) feet, more or less, Northerly of the Southwesterly corner of said Lot 3; thence deflecting to the left 90 degrees 06'05" run along a line seventy-five (75.00) feet, more or less, Northerly of and parallel with the Southerly line of said Lot 3, for a distance of thirty-five and fifty-eight hundredths (35.58) feet to a point; thence deflecting to the left 111 degrees 26'45" run Northwestwardly for a distance of forty-six and fifty-nine hundredths (46.59) feet to a point of curve; thence run Northwestwardly along the arc of a curve to the left having a radius of fifty (50.00) feet and a central angle of 31 degrees 32'21" for a distance of twenty-seven and fifty-two hundredths (27.52) feet to the point of intersection with the Westerly line of said Lot 3, said point being the Point of Beginning. Part of Lots 3 and 4, more particularly described as follows:

Begin at the SW corner of Lot 4; thence run North 150 feet to a point; thence run East 22.00 feet to a point; thence run Southeasterly approximately 59.65 feet to a point; thence Southeasterly 46.59 feet to a point; thence Westerly 35.56 feet to a point; thence Southerly 75 feet; thence Westerly to the Point of Beginning; and ALL of Lot 5, in Block 40, City of Miami South, according to the Plat thereof, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida.



Exhibit A
Legal Description of Properties

PARCEL V:

Lots 6, 7, 13, 14, 15, 16 and 17, in Block 40 South, CITY OF MIAMI, according to the plat thereof, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida.

PARCEL VI:

Lot 18, in Block 40 South, of CITY OF MIAMI, according to the plat thereof, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida.

AND

A portion of Lot 3, in Block 40 South, of CITY OF MIAMI, according to the plat thereof, as recorded in Plat Book "B", at Page 41, of the Public Records of Miami-Dade County, Florida, more particularly described as follows:

Begin at the Southwest corner of Lot 3 of said Block 40 South; thence run North along the West line of said Lot 3 for a distance of 75 feet to a point; thence run East parallel with the South line of said Lot 3 for 35 feet, more or less, to the back of a sidewalk as constructed; thence run Southeasterly on a line which makes a deflection to the right of 67 degrees 30 minutes with the last described course and approximately along the back of the sidewalk for 35 feet, more or less, to a point of curve; thence Southeasterly on the arc of said curve to the left, said curve having a radius of 68 feet and a central angle of 5 degrees 16 minutes 02 seconds and approximately along the back of said sidewalk for 6.25 feet to the East line of said Lot 3; thence run Southerly along the East line of Lot 3 for 37.27 feet to the Southeast corner of Lot 3; thence run Westerly along the South line of Lot 3 for 50.05 feet to the Point of Beginning.

PARCEL VII

Lot 1G through 7G, inclusive, of RIVERSIDE WATERFRONTS, according to the Plat thereof as recorded in Plat Book 25, Page(s) 72, of the Public Records of Miami-Dade County, Florida.

PARCEL VIII:

Parcel 1

The South 50 feet of the North 100 feet of Lots 11 and 12 in Block 40 South, MAP OF MIAMI, according to the plat thereof, as recorded in Plat Book "B" Page 41, of the Public Records of Miami-Dade County, Florida, less and except that portion conveyed to the State of Florida in Official Records Book 11951 Page 3087.

Parcel 2

The North 50 feet of Lots 11 and 12, in Block 40 South, MAP OF MIAMI, according to the plat thereof, as recorded in Plat Book "B" Page 41, of the Public Records of Miami-Dade County, Florida.

Parcel 3

The South 50 feet of Lots 11 and 12, in Block 40 South, MAP OF MIAMI, according to the plat thereof, as recorded in Plat Book "B" Page 41, of the Public Records of Miami-Dade County, Florida;

Less and except therefrom the following parcel conveyed to the State of Florida for road right-of-way, as described in that Deed recorded in Book 11951, Page 3087, and further described as: Begin at the S.W. corner of said Lot 11; thence run N.87°50'25"E. along the Southerly boundary of said Lot 11, for a distance of 24.86 feet to the Point of Beginning of a circular curve concave to the Northeast and having for its elements a radius of 25.00 feet and a tangent bearing of S.87°50'25"W.; thence run Southwesterly, Westerly and Northwesterly along the arc of said circular curve to the right, through a central angle of 89°54'21" for a distance of 39.23 feet to the point of tangency and a point on the Westerly boundary of said Lot 11; thence run S.82°15'14"E. along said Westerly boundary for a distance of 24.96 feet to the Point of Beginning.

All of said lands situate, lying and being in Miami-Dade County, Florida.



Exhibit B
Future Land Use Map Excerpt

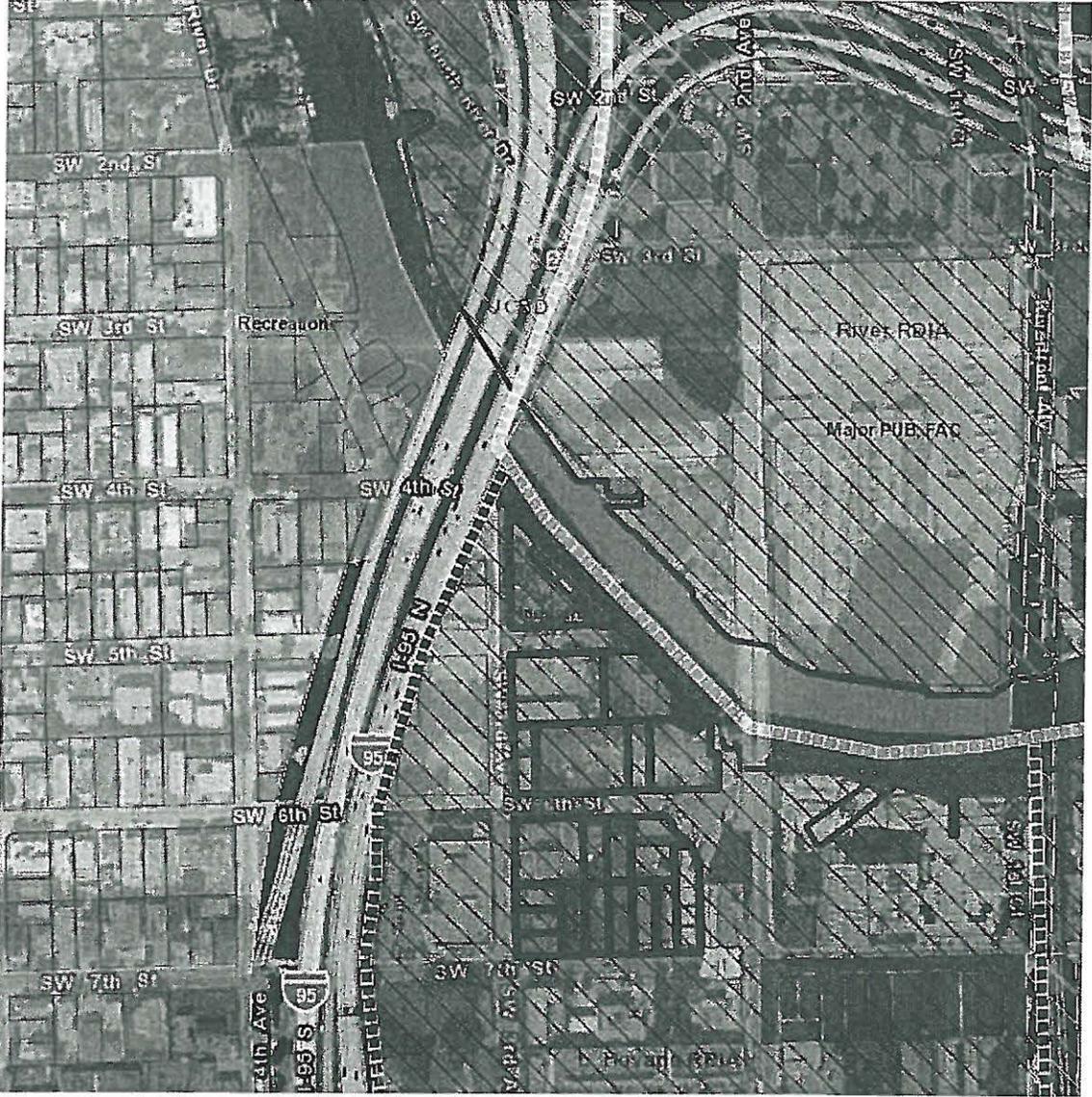


Exhibit C
Miami 21 Excerpt



Exhibit D
SAP Area

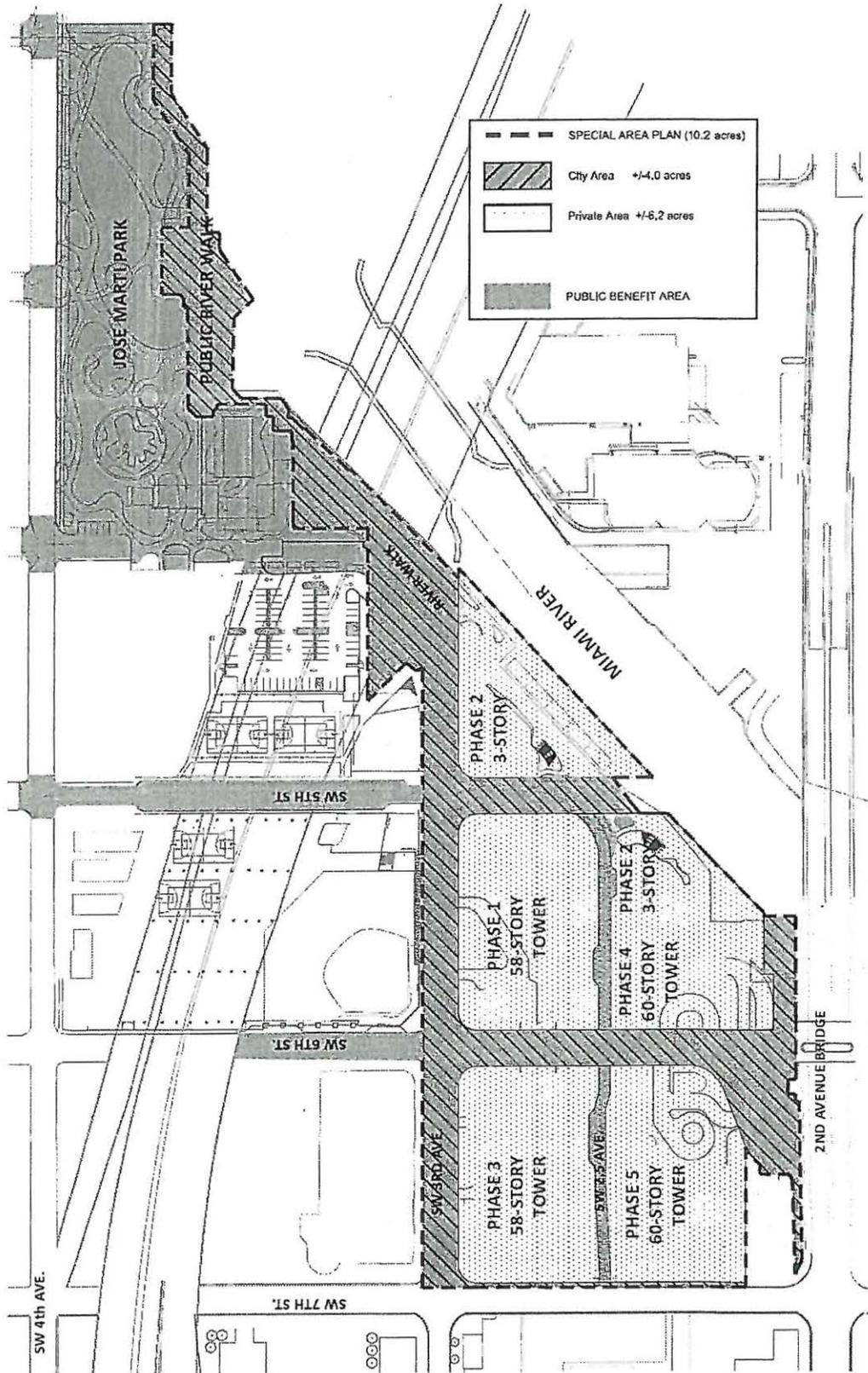


Exhibit E
SAP Application Area

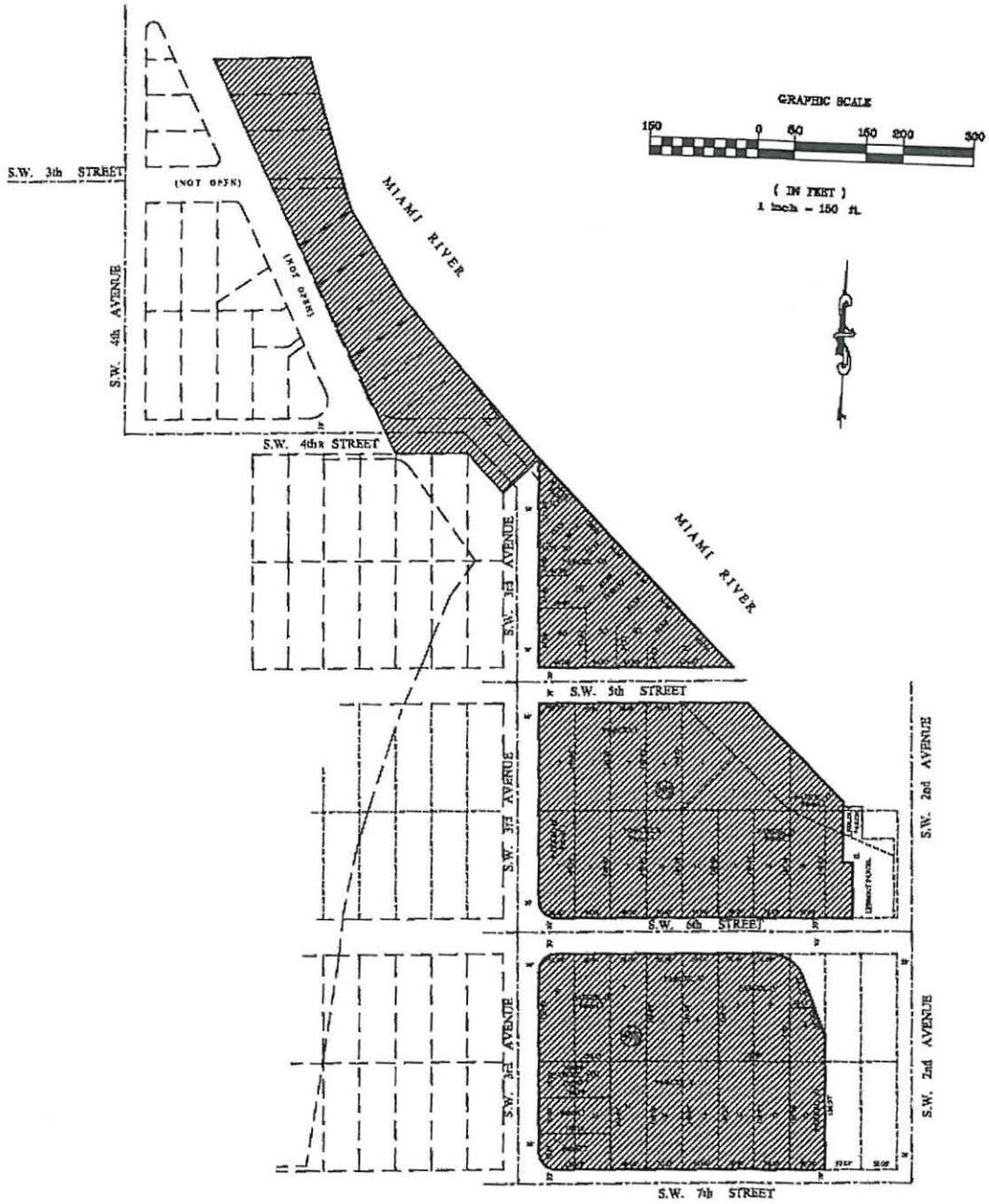


Exhibit F
Miami River SAP Regulating Plan and Design Guidelines

Included Under Separate Cover



Exhibit G
Proposed Benefit Contribution Summary

Phase	Benefit Price per Square Foot	Benefit Area (Square Feet)	Benefit Contribution
1	\$17.82	312,400	\$5,566,968
3	\$17.82	312,400	\$5,566,968
4	\$17.82	242,400	\$4,319,568
5	\$17.82	340,800	\$6,073,056
Total			\$21,526,560



Exhibit G
Miami River Public Benefits
Phased Project Schedule and Estimated Costs

Phase	Benefit	Description	Public Benefit Allocation	Public Benefit by Phase	Difference
1			\$5,566,968	\$ 5,566,968	\$ -
	Public Riverwalk, Seawall and Bulkhead Improvements	<ul style="list-style-type: none"> • Developer will construct a connected Riverwalk beginning at SW 3 Avenue and continuing through Jose Marti Park in compliance with Miami River Greenway Action Plan, Miami River Corridor Urban Infill Plan and Miami 21. • Existing cracks in the concrete cap will be sealed with a marine grade epoxy to prevent further salt water intrusion into the seawall cap along the entire 700 linear feet of bulkhead. • The gaps around the three 30"-42" outfalls protruding through the caps will be sealed with marine grade grout to prevent further upland soil erosion. • Areas of soft or chipped concrete in the panels and caps will be patched with a marine grade grout. • To prevent further erosion and undermining of the armor mat, a toe wall or additional armoring may need to be installed along a 100 foot length of the shoreline. • The area of damaged armor mat will need to be repaired with replacement armoring similar to the installed mats 	\$3,167,370		
	Jose Marti Park	Developer will improve connection between park area and riverwalk during connection with landscaping, hardscaping and street furniture.	\$279,929		
	Art in Public Places (1%)	Minimum allocation of 1% based on County requirements	\$36,973		
	Contribution to Affordable Housing Trust Fund		\$2,082,696		
3			\$5,566,968	\$ 5,566,968	\$ -
	Contribution to Affordable Housing Trust Fund		\$4,066,968		
	Contribution to Public Transportation		\$1,500,000		
4			\$4,319,568	\$ 4,319,568	\$ -
	Jose Marti Park	Developer will renovate existing pool and restroom, demolish existing gates, plazas and structures, and construct a children's interactive fountain and playground, adult game area, outdoor built-in gym equipment, canoe launch, concession area, and improve the park with landscaping, hardscaping, and signage.	\$2,479,348		
	Art in Public Places (1%)	Minimum allocation of 1% based on County requirements	\$62,940		
	Contribution to Affordable Housing Trust Fund		\$1,777,280		
5			\$6,073,056	\$ 6,073,056	\$ -
	Contribution to Affordable Housing Trust Fund		\$ 6,073,056		
	Total		\$21,526,560	\$21,526,560	\$0



This instrument was prepared by:

Name: Melissa Tapanes Llahues, Esq.
Address: Bercow Radell, & Fernandez, P.A.
200 S. Biscayne Boulevard, Suite 850
Miami, FL 33131

(Space reserved for Clerk)

DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned Owner holds the fee simple title to approximately 6.3 acres of land in the City of Miami, Florida (the "City"), described in Exhibit "A," attached to this Declaration (the "Property"), which statement as to title is supported by the attorney's opinions attached to this Declaration as Exhibit "B";

WHEREAS, the Property is currently designated Industrial and Restricted Commercial on the City's Future Land Use Map, shown on Exhibit "C," attached to this Declaration;

WHEREAS, the Property is currently zoned D3 Waterfront Industrial and T6-36B-O Urban Core, as shown on Exhibit "D," attached to this Declaration;

WHEREAS, the portion of the Property zoned D3 Waterfront Industrial is also governed by the Port of Miami River Sub-Element and identified as Category B therein;

WHEREAS, Owner will be seeking approval of a Special Area Plan ("SAP") created for the Property, to be developed in coordination with the City;

WHEREAS, the Property is a subset of the SAP Application Area, as described in Exhibit "E;"

WHEREAS, Owner will be applying to rezone the Property pursuant to the abovementioned Special Area Plan;

WHEREAS, the portion of the Property zoned D3 Marine Industrial will remain D3 Marine Industrial;

WHEREAS, Policy PA-3.1.9 of the Miami Neighborhood Comprehensive Plan requires that all new residential development located along the Miami River be the subject of a recorded



(Public Hearing)

(Space reserved for Clerk)

covenant acknowledging and accepting the presence of the existing Working Waterfront 24-hour operations, as permitted;

WHEREAS, the Port of Miami River has a designated Federal Navigable Channel featuring numerous job generating businesses, including International Shipping Terminals, Boatyards, Marinas, Tug Boat Basins, Commercial Fishing, etc.

NOW THEREFORE, in order to assure the City, and other stakeholders, that the representations made by the Owner during the City's consideration of the concurrent Land Use and Special Area Plan Applications will be abided by the Owner, its successors and assigns, freely, voluntarily, and without duress, makes the following Declaration of Restrictions covering and running with the Property:

- 1) This Declaration of Restrictions satisfies the requirement set forth in Policy PA-3.1.9 of the Miami Neighborhood Comprehensive Plan.
- 2) The Property will be redeveloped in accordance with the Miami River Greenway Action Plan and the Miami River Corridor Urban Infill Plan.
- 3) The portion of the Property currently zoned D3, and designated as Industrial on the City's Future Land Use Atlas, shall maintain a working waterfront use.
- 4) Owner recognizes that legally permitted existing Working Waterfront 24-hour operations currently exist proximate to the Property. Therefore, Owner agrees:
 - (a) not to object or otherwise attempt to impede any legally permitted Working Waterfront 24-hour operations;
 - (b) to provide all future tenants and prospective owners of the Property notice of the existing Working Waterfront 24-hour operations and will include a provision to agree not to object to legally permitted Working Waterfront 24-hour operations in each lease and or Condominium Sale Documents;
 - (c) that it is solely the Owner's responsibility to design its structures to accommodate legally permitted Working Waterfront 24-hour operations; and
 - (d) that it will not pursue any claims for liability, loss or damage, whether through litigation or otherwise, against permittees engaging in Working Waterfront 24-hour operations, related to, noise, smoke, fumes, federally regulated bridge openings, and/or other quality of life issues that might result from legally permitted Working Waterfront 24-hour operations.
- 5) There shall be no net loss of the number of recreational wet-slips along the Miami River, except as required by the United States Coast Guard, the Miami-Dade County Department of Regulatory and Economic Resources, or as required by other regulating agencies with appropriate jurisdiction.



(Public Hearing)

(Space reserved for Clerk)

Covenant Running with the Land. This Declaration on the part of the Owner shall constitute a covenant running with the land and may be recorded, at Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner, and their heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the benefit of the City of Miami and the public welfare. The Owner, and their heirs, successors and assigns, acknowledge that acceptance of this Declaration does not in any way obligate or provide a limitation on the City.

Term. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the, then, owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released by the City of Miami.

Modification, Amendment, Release. This Declaration of Restrictions may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the then owner(s) of the fee simple title to the Property, or any portion thereof, provided that the same is reviewed by the Miami River Commission for an advisory recommendation and approved by the City Commission of the City of Miami, Florida. Should this Declaration be so modified, amended, or released, the Director of the Department of Planning and Zoning or the executive officer of a successor department, or, in the absence of such Director or executive officer, by his or her assistant in charge of the office in his/her office, shall execute a written instrument effectuating and acknowledging such modification, amendment, or release.

Enforcement. Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants. The prevailing party in any action or suit pertaining to or arising out of this declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

Election of Remedies. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.



(Public Hearing)

(Space reserved for Clerk)

Presumption of Compliance. Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the City, and inspections made and approval of occupancy given by the City, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Declaration.

Severability. Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect. However, if any material portion is invalidated, the City shall be entitled to revoke any approval predicated upon the invalidated portion

Recordation and Effective Date. This Declaration shall be filed of record in the public records of Miami-Dade County, Florida at the cost of the Owner following the approval of the Application. This Declaration shall become effective immediately upon recordation. Notwithstanding the previous sentence, if any appeal is filed, and the disposition of such appeal results in the denial of the Application, in its entirety, then this Declaration shall be null and void and of no further effect. Upon the disposition of an appeal that results in the denial of the Application, in its entirety, and upon written request, the Director of the Planning and Zoning Department or the executive officer of the successor of said department, or in the absence of such director or executive officer by his/her assistant in charge of the office in his/her absence, shall forthwith execute a written instrument, in recordable form, acknowledging that this Declaration is null and void and of no further effect.

Acceptance of Declaration. The Owner acknowledges that acceptance of this Declaration does not obligate the City in any manner, nor does it entitle the Owner to a favorable recommendation or approval of any application, zoning or otherwise, and the City Commission retains its full power and authority to deny each such application in whole or in part and decline to accept any conveyance.

Owner. The term Owner shall include all heirs, assigns, and successors in interest.

[Execution Pages Follow]

STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that this is a true copy of the
original filed in this office on FEB 25 2016 day of _____
_____, A.D. 20____
WITNESS my hand and Official Seal.
HARVEY RUVIN, CLERK of Circuit and County Courts
By JOHN BULL #301085 D.C.



(Public Hearing)